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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 10th October 1953

S.R.O. 1987.—Whereas the election of Shri Jwala Prasad, as a member of the House of the People from the Ajmer North constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Harnam Singh, son of Shri Ramsingh, Ward No. 17, Hathi Bhata, Ajmer Municipality, Ajmer;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, STATE OF AJMER, AJMER

PRESENT:

1. Shri J. D. Sharma, *Chairman*.
2. Shri C. Jacob, *Member*.
3. Shri S. N. Agarwala, *Member*.

ELECTION PETITION No. 216 of 1952

Harnam Singh—*Petitioner*.

Vs.

Shri Jwala Prasad and others—*Respondents*.

JUDGMENT

This is an election petition challenging the election of the respondent No. 1 to the House of the People from the Ajmer North Parliamentary Constituency.

The petition was filed by Shri Harnam Singh as an elector in the Ajmer North Parliamentary Constituency, but on 6th March, 1953, he applied for withdrawal of the petition. The application was contested by the respondent No. 8 and was dismissed on 5th May, 1953. As Shri Harnam Singh did not care to prosecute the petition, the Tribunal, by its order, dated 18th May, 1953, permitted the respondent No. 8 to prosecute it.

The eight respondents were the candidates for election to the House of the People from the Ajmer North Parliamentary Constituency. The nomination paper of the respondent No. 2 was rejected by the Returning Officer. The respondents Nos. 6 and 7 withdrew their candidature within the prescribed time. The respondent No. 1 was declared elected.

The election of the respondent No. 1 is challenged on the grounds that;

The respondent No. 1 held offices of profit and was, therefore, disqualified for being a candidate under Article 102 Sub-clause 1 of the Constitution of India and his nomination paper was wrongly accepted. The nomination paper of the respondent No. 2 was improperly rejected and the rejection has materially affected the result of the election. The respondent No. 1 committed the major and minor corrupt practices as defined in section 123(1) and section 124 of the Representation of the People Act and further committed an illegal practice within the meaning of section 125(3) of the Representation of the People Act as he issued placards and posters which did not bear the name and address of the printer and/or publisher thereof.

The respondent No. 1 contests the petition on the grounds that he did not hold any office of profit and was not disqualified as a candidate and the nomination paper of the respondent No. 2 was not wrongly rejected and that he did not commit any major or minor corrupt practice or illegal practice. It is further pleaded that the petition is time-barred.

The respondent No. 8, in his written statement, supported the petition.

On the pleadings of the parties, the following issues were framed:—

1. Were the offices held by respondent No. 1 at the time of his nomination offices of profit under Article 102(1) of the Constitution of India and was his nomination improperly accepted?
2. Was the nomination of respondent No. 2 improperly rejected and has the rejection materially affected the election?
3. Did the respondent No. 1 commit the corrupt and illegal practices mentioned in paras. 7, 8 and 9 and annexures of the petition?
4. Whether or not the petition is within limitation?
5. To what relief is the petitioner entitled?

FINDINGS

Issue No. 1.—The respondent No. 1 was the Chairman of the Municipal Committee, Ajmer, and was a member of the District Transport Committee, Co-operative Societies Rehabilitation Board and the Rationing Advisory Committee but neither the chairmanship of the Municipal Committee nor the membership of any of the bodies mentioned above carried allowance or remuneration. It cannot, therefore, be said that the respondent No. 1 held any office of profit within the meaning of section 102 sub-clause 1 of the Constitution of India.

Issue No. 2.—Ex. A/12 is the nomination paper filed on behalf of the respondent No. 3 Shri Parmatma Swarup on 5th December, 1951. The column No. 14 contains the entry—Ajmer City Ward No. XIII-3. The Returning Officer Shri D. D. Upadhyaya passed the following order on 8th December, 1951: "Serial number of the seconder in column 14 is not given and so this nomination paper is rejected". It is common ground between the parties that Kishen Lal son of Prabhu Lal seconder is not an elector in Ward No. XIII Ajmer City. The respondent No. 8 has led evidence to prove that Kishen Lal son of Prabhu Lal was an elector in Ward No. XVIII of Ajmer City and by mistake XIII was written for XVIII. Kishen Lal R.W. 11 has been examined as a witness on behalf of the respondent No. 8. He stated that the nomination paper Ex. A/12 bore his signature as seconder and his name was Kishen Lal son of Prabhu Lal and his age at the time of election was 21 years. He further stated that his name stood as voter in the electoral roll Ward No. 237/17 and that he had been living in Piru Shah Takia near the Power House which was in Ward No. 17. Shri Chand Karan Sarda respondent No. 8 stated that the entries of the electoral roll relating to Kishen Lal son of Prabhu Lal aged 21 years were correct and that Kishen Lal lived in the house mentioned in the electoral roll. The name of Kishen Lal son of Prabhu Lal aged 21 years stands at serial No. 3 in the electoral roll of Ward No. XVIII Ajmer City. Except for the fact that the father's name in the electoral roll is Prabha Lal, the above description is fully applicable to Kishen Lal. The name of Kishen Lal son of Prabhu Lal is not entered in the electoral roll of Ward No. XVII Ajmer City. Evidently, Prabha Lal is a misprint for Prabhu Lal. On the evidence on record, there can be no doubt that Kishen Lal son of Prabhu Lal is an elector at serial No. 3 in the electoral roll of Ward No. XVIII Ajmer City.

The order of the Returning Officer rejecting the nomination paper on the ground that the serial number of the seconder in column 14 is not given appears to be based on a misconception arising out of the 'dash' between XIII and 3. But all the same, the number of the ward as given in column No. 14 is not correct.

It is not denied that it is open to the respondent No. 1 to support the order of rejection on grounds other than those on which the Returning Officer made the order. The question is whether the mention of a wrong Ward was a formal defect. It is now settled law that the rules relating to the filling up of the nomination form are not mandatory and are merely directory and that the form need not be filled in with meticulous accuracy and it is enough if the rules are substantially complied with. It has been further laid down, almost unanimously by all the Tribunals, that the object of the particulars required to be given on the form is to ensure a ready source of information to the Returning Officer as well as to the electors who might be interested in checking up the identity and eligibility of the candidate, the proposer and the seconder and it is the duty of the Returning Officer to carefully check the names and the electoral numbers of the candidate, the proposer and the seconder to make sure that the same tally with those given in the electoral rolls and if there are some clerical mistakes in regard to these matters, he should point out the same to the candidate and he may either allow such clerical errors to be corrected or may direct the same to be overlooked. But the duty of the Returning Officer to point out such mistakes and that of the candidate to properly fill in the form are not interdependent and the failure of the Returning Officer to point out the mistake will not relieve the candidate from filling up the form properly and facing the consequences of any material defects in the same. Applying the above principles to the present case, it will be evident that the mention of a wrong Ward was a material and not merely a formal defect.

In almost all cases cited on behalf of the respondent No. 8, there was an omission of one sort or the other in filling up the form and not a misdescription. In Anglo-Indian Constituency case No. 1 (Doabis Indian Election Cases Vol. I, P. 247), the electoral roll of the Constituency was divided into several sub-divisions each beginning with serial No. 1. The candidate failed to mention the sub-division. It was held that the name of the sub-division does not throw any light on the identity and eligibility of the candidate. It merely aids the Returning Officer in the mechanical operation of locating a name in the electoral roll. If in spite of the total omission to describe the sub-division or inadequate description a name in a certain roll can easily be located, it must be held in that case that there has been a substantial compliance with the rule and the nomination would be good. If on the other hand the information is so meagre as to entail laborious search in the roll, it must be found that there has not been a substantial compliance and the nomination would be bad.

A contrary view was taken in Gondia General Rural Constituency 1937 (Sen and Poddar p. 326) where it was held that an omission to mention the sub-division makes it difficult or even impossible to check the identity of the proposers and seconders. In Mathura Das Vs. Dara Singh (Gazette of India Extraordinary, dated 21st January, 1953, p. 865) the electoral area was misdescribed as Halqa Patwari Amloh instead of giving Ward, Village or town. It was held that without an elaborate search the candidate's number could be located. Much reliance has been placed upon this case because of the misdescription in the nomination paper. But the misdescription was basically wrong in that there was nothing like Halqa Patwar Amloh and the Returning Officer would be set on enquiry about the identity and eligibility of the candidate. But the mention of the Ward No. XIII instead of No. XVIII could not raise in the mind of the Returning Officer any suspicion about the identity and eligibility of the seconder or set him on an enquiry about him.

In Tikun Ram Sharma Vs. Lalit Bahadur (Gazette of India Extraordinary, dated 15th October, 1952, p. 2285) the electoral roll was in two parts A and B and the nomination paper was rejected for failure to mention the part in which the name of the candidate was included. There was no doubt as to his identity and eligibility. It was a case of omission which was not of a substantial nature.

In the Delhi Tribunal case (Gazette of India Extraordinary, dated 27th February, 1953, p. 567), there was an omission of the sub-division. There was similar omission in Shri Shiv Dayal and others Vs. Shri Teg Ram and others decided by the Election Tribunal, Ludhiana. In the Midnapore South case (Hammond Vol. II, p. 185), the electoral number was not mentioned as the information was not available when the nomination form was filled up and it was conveyed to the Returning Officer as soon as obtained. In these circumstances the omission was held immaterial.

In Betul district case (Doabis Election Cases Vol. I, p. 211) only initials concerning the candidate were given and the nomination paper was rejected notwithstanding the fact that in the electoral roll also only initials and surname were given. The case is, therefore, quite distinguishable.

In Vellore Tribunal Case (Gazette of India, dated 20th November, 1952, p. 2497), the electoral roll number was not given and the nomination paper was rejected. The case was really decided on the point that the candidate was not qualified. As a candidate as his name was not borne on the rolls on the date of nomination. But the Tribunal made the observations to the effect that the filling of columns 7 and 8 was not a mere matter of form but of substance.

In West Bengal Tribunal case (Gazette of India Extraordinary, dated 18th December, 1952 p. 991), instead of mentioning the Murshidabad Parliamentary Constituency and the electoral number, the candidate mentioned in columns 7 and 8 the Assembly Constituency which formed part of the Parliamentary Constituency. The nomination paper was rejected and the rejection was upheld by the Tribunal which observed that such necessary particulars should be stated in unequivocal, unambiguous and explicit terms in the nomination form.

In Gorakhpur case (Suraj Narain Vs. Shri Ram Nath, Gazette of India Extraordinary, dated 24th January, 1952, p. 205), the electoral number of the seconder was given as 729 instead of 728 as a result of mistake in printing in the electoral roll. It was observed by the Tribunal that the Returning Officer should have satisfied himself by looking into the electoral roll which was before him and he should have satisfied himself by making inquiries from the respondent No. 9 as to how No. 729 had been entered instead of No. 728 and if this had been done the mistake in printing would have been brought to his notice in no time. The case is clearly distinguishable as a mere look into the electoral roll would have brought to the notice of the Returning Officer the mistake in the electoral number.

In Sikandrabad case (Gazette of India, dated 4th April, 1953, p. 1056), the electoral number at which the candidate was entered was not given against columns 7 and 8. The candidate had applied before the date of the nomination for the inclusion of her name in the rolls under Rule 20 sub-clause 2(2) of the Representation of People Rules, 1950, and she received intimation that her name was included in the electoral roll on the day the nomination paper was filed, and no serial number had been given to her till then. In the circumstances, the omission was not considered material.

In Gurnam Singh etc. Vs. Pratap Singh etc. (Gazette of India Extraordinary, dated 24th July, 1953, p. 2489), Shri Amar Singh Advocate respondent No. 16 was originally registered as an elector in the electoral roll for Rupar town at serial No. 342. This was mentioned in column 8 of the nomination form. Along with the electoral roll for Rupar town, there were several supplementary lists attached, some adding certain names to the main list and the others scoring out certain names already on the main list. One of the supplementaries contained an entry of cancellation of the original entry of 342 relating to Shri Amar Singh. Nobody had noticed the entry cancelling the original entry 342. On the day of scrutiny, it was pointed out that the entry '342 Rupar town' relating to Shri Amar Singh had been struck off. Thereupon, Shri Amar Singh at once informed the Returning Officer that he was also registered as a voter in his village Rolu Magra and as such was qualified to stand as a candidate. He showed the relevant entry to the Returning Officer but the Returning Officer passed the following order: "Rejected. The candidate has given the electoral number etc. which does not exist as the same has been erased in Rupar town. His name appears on the Badli Jhalin but nothing certain can be said as to whether he is the same person in so far as his parentage etc. differ" Shri Amar Singh wanted to give evidence of his identity but it was met by the further objection that the name of his father and his occupation were differently given and it could not be said with certainty that that entry related to him. The Tribunal held that the wrong entry was given under a *bona fide* mistake and the identity was beyond dispute and a summary inquiry could have also established the eligibility of Shri Amar Singh.

The above case is clearly distinguishable as the wrong entry was given at column 8 under a *bona fide* mistake and the Returning Officer did not make the inquiry about the identity and eligibility when invited to do so by the candidate Shri Amar Singh. In the present case, there was nothing to indicate to the Returning Officer that the Ward No. XIII was wrongly mentioned for Ward No. XVIII. Ajmer City has 32 Wards and the identity of Kishen Lal seconder could not be established unless the Returning Officer had looked into the electoral rolls of the 32 Wards. This should have entailed a laborious search. It is not clear in what circumstances Ward No. XIII was mentioned for Ward No. XVIII or that the mistake was *bona fide* or was due to any good or valid ground. There is also nothing on the record to show that Shri Parmatma Swarup or his proposer or seconder called upon the Returning Officer to make an inquiry. Indeed, none of them appears to have been present at the time of the scrutiny. Shri Parmatma Swarup had authorized Shri Bhoomi Datta Shukla to be present at the time of the scrutiny but he too was absent. In these circumstances, it cannot be said that the

Returning Officer failed in the discharge of his statutory duty under section 33(5), Representation of the People Act. In our view, the identity and eligibility of Kishen Lal son of Prabhu Lal as a seconder could not be established and the wrong description of the Ward in column 14 was a material defect and the nomination paper was rightly rejected.

The respondent No. 1 has also raised the plea that the nomination paper of Shri Parmatma Swarup was not accompanied by the declaration in form 5A and was invalid on that ground also. The nomination paper shows that Shri Parmatma Swarup had appointed one Kanwar Behari Lal as his election agent. Under section 40 Representation of People Act, it was necessary to give the declaration of Kanwar Behari Lal on form 5A. Towards the end of the trial certain papers were summoned from the Returning Officer and they did not contain a declaration on form 5A. But the plea that the nomination paper was not accompanied by declaration on form 5A has not been taken in the written statement and was not disclosed until the papers were summoned from the Returning Officer. Evidently, the respondent No. 8 has had no opportunity to meet the plea and it will be unfair to him to entertain the plea at so late a stage.

Issue No. 3.—Shri Rang Raj Mehta respondent No. 3 applied for and was given a congress ticket for election to the Municipal Committee as is borne out by Ex. A/29. But before the election, he declared himself as an independent candidate and Shri Bal Krishna Garg, General Secretary of the State Congress Committee wrote him the letter Ex. A/30 in that connection. Shri Bal Krishna Garg again wrote the letter Ex. A/31 informing Shri Rang Raj Mehta that if a satisfactory explanation was not received, disciplinary action may be taken against him. Shri Rang Raj Mehta sent the reply Ex. A/32 explaining the situation. After the Municipal Elections, the United Municipal Party was formed consisting of 17 members out of 32 and Shri Rang Raj Mehta joined that party. But some time before the election of the *vide*—chairman which took place on 2nd January, 1952, he left the United Municipal Party and was elected senior vice-chairman in the meeting held on 2nd January, 1952. Shri Rang Raj Mehta had already filed his nomination paper for election to the House of the People. But on 14th January, 1952, he sent a notice purporting to be under Rule 9(1) of his withdrawal from the election. As the last date for withdrawal was 12th December, 1951, no action could be taken on the above notice and it was accordingly filed.

The allegation in the petition is that Shri Rang Raj Mehta withdrew his candidature for election to the House of the People in pursuance of a deal according to which Shri Jwala Prasad Sharma was to help him in his election as the senior vice-chairman. Shri Jwala Prasad Sharma denies in his written statement that there was any such deal. There is no direct evidence in support of the deal. In fact, all the witnesses examined on behalf of the respondent No. 8 have denied having personal knowledge of the deal. Shri Saras Viyogi who attended as advisor the meeting of the United Municipal Party stated that he had no personal knowledge of the bargain between Shri Rang Raj Mehta and Shri Jwala Prasad beyond that mentioned in the memorials and telegrams. Shri Hari Bhau Upadhyaya, Chief Minister and President of the Pradesh Parliamentary Board from October, 1951, till February, 1952, stated that in his knowledge, there was no deal between the respondents 1 and 3. To the same effect in the statement of Shri Muket Behari Lal Advocate and senior vice-chairman of the Pradesh Parliamentary Board during the time Shri Hari Bhau Upadhyaya was the President. Even Shri Mahadeo Prasad, Secretary of the United Municipal Party has no personal knowledge of the deal. Another important witness examined on behalf of respondent No. 8 was Shri Arjun Das Advocate and M.L.A. He, too, has no personal knowledge of the alleged deal between the respondents 1 and 3. Shri Chand Karan Sarda respondent No. 8 has also no personal knowledge of the bargain. Reliance has been placed upon 'Sagar' a weekly Ex. A/7 in which it was published that Shri Rang Raj Mehta had withdrawn his candidature from election to the House of the People and wanted to be chairman of the Municipal Committee. Apart from the fact that there is no evidence in support of the authenticity of the news item, it does not contain any reference to the deal between the respondents 1 and 3.

Particular stress has been laid on the news item published in the Congress Patrika, dated 18th January, 1952, in which was published the news of the withdrawal of Shri Rang Raj Mehta in favour of the congress candidate Shri Jwala Prasad Sharma. It was not admitted on behalf of respondent No. 1 that the Congress Patrika was an official organ of the congress but Shri Ram Narayan Chowdhry the then junior vice chairman of the P.C.C., admitted that the Congress Patrika was the official organ of the congress. But the basis on which the news item was published has not been established. Shri Hazari Lal who was printer

and publisher of the Congress Patrika examined on behalf of respondent No. 1 has stated that on the basis of what he had heard in the public, he published the news item about the withdrawal of Shri Rang Raj Mehta's candidature in the Congress Patrika, dated 18th January, 1952. Considering that on 14th January, 1952, Shri Mehta had given a notice in writing of the withdrawal of his candidature, the news item was not wrong. Almost similar news item was published in the Nav Jyoti which although not an official organ of the Congress was a supporter of the Congress. Apart from the news item in the Congress Patrika the official organ of the congress, the allegation in support of the deal gets little or no support from other sources. In the absence of the source of information on the basis of which the news item in the Congress Patrika was published, it also does not give much support to the allegation of deal.

The respondent No. 1 has even disputed that Shri Rang Raj Mehta had actually withdrawn from the contest. It is pointed out on his behalf that he secured about 6000 votes and was present at the time of the scrutiny. The mere fact that Shri Rang Raj Mehta had secured about 6000 votes cannot be itself lead to the conclusion that he had not withdrawn from the contest especially as he himself had given the notice of withdrawal. His presence at the time of the scrutiny is not at all inconsistent with the withdrawal of his candidature. It is noteworthy that no polling agents were appointed by Shri Rang Raj Mehta. Shri D. Vable Principal D.A.A.V. College who was a candidate for election to the State Assembly stated that he did not see Shri Rang Raj Mehta canvassing any votes. On the evidence, there can be no doubt that Shri Rang Raj Mehta had withdrawn his candidature although in the eye of law, it was not effective. A suspicion also arises that he had withdrawn himself in favour of the congress candidate but it is not proved that he had done so in pursuance of any bargain with respondent No. 1.

The allegation of a corrupt practice must be supported like a criminal charge and the evidence produced on behalf of respondent No. 8 hardly supports the allegation of deal. The Congress Municipal Party consisted of 6 or 7 members in all. The minutes of the meeting, dated 2nd January, 1952, show that Shri Rang Raj Mehta was proposed by Shri Puran Chand and supported by Shri Sarup Narain. There was no counter proposal and Shri Rang Raj Mehta was declared elected without opposition. Reference has been made to the way in which Shri Jwala Prasad Sharma as chairman conducted the proceedings on 2nd January, 1952, and previous to that and it is sought to be inferred that he had so manoeuvred the matters that Shri Rang Raj Mehta was elected without contest. No such conclusion is supported by the proceedings. Only if there was a counter-proposal could it be judged whether Shri Jwala Prasad and his party supported Shri Rang Raj Mehta. It may be recalled that the Congress Municipal Party consisted of 6 or 7 members only and it is in evidence that all of them were not the supporters of Shri Rang Raj Mehta. The circumstances attending the election of Shri Rang Raj Mehta as senior vice-chairman do not show that there was any bargain between him and respondent No. 1.

Considerable reliance was placed by respondent No. 8 on the proceedings book Ex. A/8 of the State Parliamentary Board. It was pointed out that the proceedings relating to the bargain had been removed and substituted by different proceedings. It was further pointed out that the inward and outward dispatch book showing the correspondence that passed between the State Parliamentary Board and Shri Rang Raj Mehta had not been produced. The suggestion was that a letter of thanks was sent to Shri Rang Raj Mehta and the P.C.C., had received the various memorials and representations sent by the United Municipal Party. Shri Chhitar Mal the present office Secretary of the P.C.C. stated that the dispatch book in use upto the elections had been weeded out by his predecessor Shri Ram Sarup the then office Secretary. Sarvashri Hari Bhau Upadhyaya and Muket Behari Lal have stated that they did not give any orders for weeding out the dispatch book. It is not, therefore, clear in what circumstances, the despatch book was weeded out. But in view of their evidence to which reference has been already made, no inference in support of the deal can be drawn from the mere absence of the despatch book. It was also pointed out that rough notes of the proceedings were taken and were faired out subsequently. Shri Ram Narayan Choudhry stated that copious rough notes of the proceedings were taken and then faired out. The rough notes have not been produced. The suggestion on behalf of the respondent No. 1 is that the rough notes were not preserved after being faired out.

Reliance has also been placed upon the memorials and representations sent to the various authorities by the United Municipal Party. In one or two memorials, there is a reference to the deal between the respondents 1 and 3. But Shri Mahadeo Prasad Secretary of the United Municipal Party has stated that

the memorials were drafted on the basis of rumours. The evidence of Sarvashri Arjun Das and Saras Viyogi is, more or less, to the same effect. Particular stress has been laid upon the draft telegrams Exs. A/24 to A/27 in the hand-writing of Shri Krishna Gopal Garg, General Secretary of the P.C.C. But Shri Krishna Gopal Garg refused to give evidence and the contents of the draft telegrams have not been legally proved. Also the telegrams given for transmission to the Telegraph Department have not been summoned. Exs. A/24 to A/27, have, therefore, no evidentiary value. Further reliance is placed upon the petition itself for proving which Shri Harnam Singh was examined as a witness, but he was not asked any question about the truth of the allegations contained in the petition. The allegations, therefore, remained mere allegations. It is further pointed out that the respondent No. 3 in his written statement admitted the allegations contained in the petition but he has not been examined as a witness and the written statement has no evidentiary value against respondent No. 1.

The respondent No. 8 also gave evidence to prove that in a meeting in the Naya Bazar, Shri Jwala Prasad Sharma, Shri Muket Behari Lal and Shri Hari Bhau Upadhyaya told the audience that Shri Rang Raj Mehta had withdrawn in favour of the congress candidate. Shri Bhanwar Lal Rawat is the only witness examined in support. He has betrayed ignorance of vital matters concerning the meeting and no reliance can be placed upon his uncorroborated testimony. Shri Jwala Prasad, Shri Muket Behari Lal and Shri Hari Bhau Upadhyaya have denied having made the declaration attributed to them. Shri Chand Karan Sarda also stated that he heard Shri Jwala Prasad himself saying in two public meetings that Shri Rang Raj Mehta had withdrawn in his favour. Shri Jwala Prasad denies having made such a declaration in any meeting. There being oath against oath, the respondent No. 8 has not discharged the onus that lay heavily on him.

On a consideration of the evidence and circumstances, we are of the opinion that it is not proved that there was any pact between the respondents 1 and 3.

The petition also contains the allegations that in pursuance of the bargain, the respondent No. 1 averted the disciplinary action which the State Parliamentary Board wanted to take against Shri Rang Raj Mehta for his having declared himself as an independent candidate. There is no satisfactory evidence in support of the allegation. Shri Rang Raj Mehta was not a member of the congress and it is doubtful if in spite of the letter Ex. A/31, any disciplinary action could be taken against him.

Another allegation in the petition is that Shri Jwala Prasad abused his position as Chairman, Municipal Committee, in order to get support for his election. The concrete instance of the abuse of power is the giving of the uniforms to the Municipal sweepers. It is, however, clear that the sweepers were entitled to the uniforms and the expenditure over them was sanctioned by the Executive Officer in his emergency power under section 49 Municipal Regulation. Stress has been laid on the fact that the distribution of the uniforms was purposely delayed till the date of polling. Shri Sardari Lal, Chief Sanitary Inspector, and Shri Nand Kishore, Superintendent, Administration, Municipal Committee, have explained the circumstances in which the distribution of the uniforms was delayed. The respondent No. 1 does not appear to be responsible for the delay. Even assuming that the distribution was deliberately delayed till the date of polling, it will not still be a corrupt practice because the sweepers were not given anything more than their due. It will be a corrupt practice if at the time of the distribution the sweepers were told, directly or indirectly, to vote for the respondent No. 1. Shri Sugna, a municipal sweeper, stated that while distributing the uniforms Shri Jwala Prasad said that after the election, he would increase their pay if they voted for him. It appears from his statement that the uniforms were distributed at the Municipal Office when the respondent No. 1 was not present and the above statement was made by him at the temple of the Harijans. Shri Kalla another municipal sweeper has supported Shri Sugna. But he stated that he did not tell any body about the meeting or what Shri Jwala Prasad had stated. Shri Jwala Prasad denies having convened or attended any meeting of the Harijans. Shri Moola Choudhri and Nanda deny that any meeting of the Harijans at their temple was attended by Shri Jwala Prasad. There is no particular reason to believe the evidence of Sugna and Kalla and it cannot be held that the respondent No. 1 had convened and attended any meeting of the Harijans at their temple. There was an increase of Rs. 5 in the pay of some municipal sweepers but the municipal records show that it was in accordance with the order of the Government under the Minimum Wages Act.

The alleged abuse of the powers of the respondent No. 1 as chairman concerns primarily the municipal administration and except for the part alleged to have been played by the municipal employees Shri Bhagchandani, Nand Ram and Basant Singh, its connection with the election of respondent No. 1 has not been

established. Bhagchandani denies having done any canvassing for respondent No. 1. Shri Jwala Prasad has denied that any municipal employee canvassed votes for him. In the absence of any satisfactory evidence in corroboration, the allegation cannot be held proved.

It is further alleged in the petition that the respondent No. 1 issued placards and posters which did not bear the name and address of the printer and publisher thereof. The allegation remains absolutely unproved. The respondent No. 1 was asked if he got posters printed in the Gandhi Press and he replied negative. No evidence has been produced to the contrary.

The correctness of the returns of election expenses filed by the respondent No. 1 is also challenged. It is pointed out that the return does not contain the expenses of the polling agents and the amount received by respondent No. 1 out of Rs. 25,000 placed at the disposal of the State Parliamentary Board by the Central Parliamentary Board of the congress. There is nothing on the record to prove that the respondent No. 1 spent any amount over his polling agents. Considering that he is a congress worker, it is not improbable that his polling agents were volunteers and nothing was paid to them. It is not denied that the Central Parliamentary Board gave Rs. 25,000 for election purposes to the State Parliamentary Board. But the case of the respondent No. 1 is that it was spent on the general propaganda and was not given to any particular candidate. The account book of the State Parliamentary Board contains the details of the expenditure. The respondent No. 8 has challenged its correctness. It is true that the account-book has not been maintained in the regular manner but all the same, there is nothing to disprove its correctness, and it cannot be held that a sum of Rs. 5,000 as alleged by respondent No. 8 was paid to the respondent No. 1. He could spend up to Rs. 11,000 and the return of expenses was for Rs. 2,500 and odd. Evidently, there could be no motive for not showing Rs. 5,000 in the return of expenses if the respondent No. 1 had, in fact, received it.

We are, therefore, of the opinion that it is not proved that the respondent No. 1 was guilty of the major and minor corrupt practices or any illegal practice.

Issue No. 4.—The plea of limitation has no force and has not been pressed.

Issue No. 5.—In view of the above findings, the petitioner is not entitled to any relief and the petition is liable to be dismissed. But, in the circumstances, we are of the opinion that the parties should bear their own costs.

ORDER

The petition is dismissed. The parties will bear their own costs.

The 30th September 1953.

(Sd.) J. D. SHARMA.

(Sd.) S. N. AGARWAL.

(Sd.) C. JACOB.

[No. 19/216/52-Elec.III/4176A.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.